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18 **UNITED STATES DISTRICT COURT**

19 **CENTRAL DISTRICT OF CALIFORNIA**

20 STEFFON BARBER, an individual,

21 Plaintiff,

22 v.

23 COUNTY OF SAN BERNARDINO
24 and CHRISTOPHER ALFRED,

25 Defendants

26 Case No. 5:22-cv-00625-KK-DTB

27 District Judge Kenly Kiya Kato
28 Magistrate Judge David T. Bristow

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION TO STAY
(DKT. 78); MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT; DECLARATION OF
RENEE V. MASONGSONG IN
SUPPORT**

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Steffon Barber hereby opposes Defendants' Ex Parte Application for an Order to Stay Proceedings Pending Appeal (Dkt. No. 151). For the reasons below, as well as the reasons discussed in Plaintiff's Ex Parte Application to Certify Defendants' Appeal as Frivolous (Dkt. No. 152), this Court should certify Defendants' Appeal as frivolous, deny Defendants' Ex Parte Application for an Order to Stay Proceedings Pending Appeal, and allow this case to proceed to trial as scheduled on January 26, 2026.

An interlocutory appeal typically “divests the district court of its control over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982). However, the divestiture of jurisdiction rule is a judge-made doctrine, not based on statutes or procedural rules, and is “applied in a ‘less stern’ manner than true jurisdictional rules.” *Rodriguez v. Cnty. of Los Angeles*, 891 F.3d 776, 790 (9th Cir. 2018) (citing *United States v. Claiborne*, 727 F.2d 842, 850 (9th Cir. 1984)). There is a well-established exception to the divestiture doctrine that allows Courts to maintain jurisdiction over claims even after an appeal has been filed, insofar as the appeal is frivolous. *Peck v. Cnty. of Orange*, 528 F. Supp. 3d 1100, 1103 (C.D. Cal. 2021). On interlocutory appeal, the Ninth Circuit has “jurisdiction only to the extent the issue appealed concerned, not which facts the parties might be able to prove, but, rather, whether or not certain given facts showed a violation of clearly established law.” *Foster v. City of Indio*, 908 F.3d 1204, 1210 (9th Cir. 2018) (internal quotations omitted); *Ortiz v. Jordan*, 562 U.S. 180, 188 (2011) (“[I]nstant appeal is not available . . . when the district court determines that factual issues genuinely in dispute preclude summary adjudication.”).

26 In the instant case, this Court’s Order denying summary judgment to Deputy
27 Alfred on qualified immunity grounds was premised on material factual disputes.
28 This Court appropriately held that “genuine disputes of material fact exist as to

1 whether Deputy Alfred's force was reasonable." (Dkt. No. 132 ("MSJ Order") at pp.
2 13, 22). Defendants are now appealing this Court's denial of summary judgment and
3 qualified immunity to Deputy Alfred based on their own version of the facts, and
4 thus, Defendants' appeal is entirely without merit.

5 **II. LEGAL STANDARD**

6 "[I]mmediate appeal from the denial of summary judgment on a qualified
7 immunity plea is available when the appeal presents a 'purely legal issue. . . .'
8 However, instant appeal is not available . . . when the district court determines that
9 factual issues genuinely in dispute preclude summary adjudication." *Ortiz*, 562 U.S.
10 at 188. An order denying qualified immunity on the basis of disputed material facts
11 is not a final, immediately appealable order. *Johnson v. Jones*, 515 U.S. 304, 319–20
12 (1995). "Where the district court denies immunity on the basis that material facts are
13 in dispute, [appellate courts] generally lack jurisdiction to consider an interlocutory
14 appeal." *Collins v. Jordan*, 110 F.3d 1363, 1370 (9th Cir. 1996); *Behrens v.*
15 *Pelletier*, 516 U.S. 299, 308 (1996) (*citing Mitchell v. Forsyth*, 472 U.S. 511, 530
16 (1985)). *Chuman v. Wright*, 960 F.2d 104, 105 (9th Cir. 1992) clearly gives district
17 courts the right to certify an interlocutory appeal as frivolous. "Should the district
18 court find that the defendants' claim of qualified immunity is frivolous or has been
19 waived, the district court may certify, in writing, that defendants have forfeited their
20 right to pretrial appeal, and may proceed with trial." *Id*; *see also California ex rel.*
21 *Lockyer v. Mirant Corp.*, 266 F. Supp. 2d 1046, 1052 (N.D. Cal. 2003) (explaining
22 and applying *Chuman* certification process); *Rodriguez*, 891 F.3d at 790–92.

23 In determining whether to stay proceedings pending appeal of a denial of
24 qualified immunity, district courts must weigh the interests of the defendants
25 claiming immunity from trial with the interest of the other litigants and the judicial
26 system. "During the appeal memories fade, attorneys' meters tick, judges'
27 schedules become chaotic (to the detriment of litigants in other cases). Plaintiffs'
28 entitlements may be lost or undermined." *Apostol v. Gallion*, 870 F.2d 1335, 1338–

1 39 (7th Cir. 1989).

2 **III. DISCUSSION**

3 **A. This Court Should Deny Defendants' Motion to Stay Because This
4 Court's Order Denying Qualified Immunity Based on Disputed
5 Issues of Material Fact is Not an Immediately Appealable Order**

6 In the instant case, this Court's Order denying summary judgment to Deputy
7 Alfred on qualified immunity grounds was premised on material factual disputes.
8 This Court appropriately held that "genuine disputes of material fact exist as to
9 whether Deputy Alfred's force was reasonable." (Dkt. No. 132 ("MSJ Order") at pp.
10 13, 22). As this Court pointed out in its order denying Defendants' MSJ, a jury
11 could conclude that, contrary to Deputy Alfred's testimony, he did have the space to
12 move out of Plaintiff's way. (*Id.* at pp. 15-16). This is a central dispute in this case
13 that this Court appropriately resolved in Plaintiff's favor at this stage, and a fact that
14 Defendants must (but do not) assume to be true. This Court also appropriately
15 determined that a reasonable jury could find that Deputy Alfred had sufficient time
16 to move to the backyard opening, considering the slow speed of the Trailblazer. (*Id.*
17 at p. 16). Whether Deputy Alfred had sufficient time to tactically reposition, if
18 necessary, as well as the speed of the Trailblazer, are also genuine disputes of
19 material fact.

20 In denying qualified immunity to Deputy Alfred, this Court appropriately
21 determined that Deputy Alfred's use of deadly force, "viewed most favorably to
22 Plaintiff, violated clearly established law." (Dkt. No. 132 ("MSJ Order") at p. 18).
23 Under Plaintiff's version of the facts, cases like *Acosta v. City & Cnty. of San*
24 *Francisco*, 83 F.3d 1143 (9th Cir. 1996) and *Orn v. City of Tacoma*, 949 F.3d 1167
25 (9th Cir. 2020) clearly establish Plaintiff Barber's constitutional right to be free
26 from excessive force in this situation. (Dkt. No. 132 "MSJ Order" at pp. 18-19). By
27 contrast, the cases cited by Defendants, including *Monzon v. City of Murrieta*, 978
28 F.3d 1150 (9th Cir. 2020), *Gaxiola v. City of Richmond Police Dep't*, 131 F.App'x

1 508 (9th Cir. 2005), and *Wilkinson v. Torres*, 610 F.3d 546 (9th Cir. 2010) are not
2 analogous to the instant case when viewing the facts in the light most favorable to
3 Plaintiff Barber. (See Dkt. No. 132 “MSJ Order” at p. 16, fn. 11). It is anticipated
4 that Defendants will continue to argue on Appeal that *Monzon*, *Gaxiola*, and
5 *Wilkinson* are analogous to the instant case. In so doing, Defendants would be
6 continuing to argue their version of the material facts, which Plaintiff disputes.

7 In addition to the disputed issues of material fact surrounding the
8 reasonableness of Deputy Alfred’s shooting, this Court also appropriately held that
9 “there is a question of fact as to whether defendant County’s failure to train had a
10 ‘direct causal link’ to the deprivation of Plaintiff’s Fourth Amendment rights.” (Dkt.
11 132 (“MSJ Order”) at p. 20).

12 Interlocutory appeals not for second-guessing a trial court’s determination
13 that there is a genuine issue of fact. *Kennedy v. City of Ridgefield*, 439 F.3d 1055,
14 1060 (9th Cir. 2006); *Isayeva v. Sacramento Sheriff’s Dep’t*, 872 F.3d 938, 945 (9th
15 Cir. 2017) (“Our jurisdiction does not extend to all denials of qualified immunity on
16 summary judgment. We do not have jurisdiction to decide whether there is a
17 genuine issue of material fact.”); *Ames v. King Cty.*, 846 F.3d 340, 347 (9th Cir.
18 2017) (“Where the district court has determined the parties’ evidence presents
19 genuine issues of material fact, such determinations are not reviewable on
20 interlocutory appeal.”); *Ortiz*, 562 U.S. at 188. Therefore, Defendants’ interlocutory
21 appeal is not available because this Court clearly and appropriately determined that
22 material factual issues genuinely in dispute preclude granting summary judgment
23 and qualified immunity in this case. See *Ortiz*, 562 U.S. at 188. The foregoing
24 disputes identified in this Court’s MSJ Order are “material” because the resolution
25 of these facts is key to assessing the reasonableness of Deputy Alfred’s conduct.
26 Hence, this Court should find Defendants’ appeal baseless and insufficient to
27 deprive this Court of jurisdiction, and should deny Defendants’ Ex Parte Application
28 for an Order Staying Proceedings Pending Appeal. See *Kennedy*, 439 F.3d at 1060

1 (citing *Knox v. Southwest Airlines*, 124 F.3d 1103, 1107 (9th Cir. 1997) (no
2 jurisdiction over an interlocutory appeal that focuses on whether there is a genuine
3 dispute about the underlying facts)).

4 **B. This Court Should Deny Defendants' Motion to Stay Because
5 Plaintiff Will be Prejudiced by a Stay of This Action, and
6 Defendants' Appeal is Unlikely to Succeed on the Merits**

7 In *Golden Gate Restaurant Assoc. v. City and County of San Francisco*, 512
8 F.3d 1112, 1115 (9th Cir. 2008), the Ninth Circuit set forth the factors to be
9 considered in issuing a stay of the District Court proceedings pending an appeal:

10 (1) whether the stay applicant has made a strong showing that he is
11 likely to succeed on the merits; (2) whether the applicant will be
12 irreparably injured absent a stay; (3) whether issuance of the stay will
13 substantially injure the other parties interested in the proceeding; and
14 (4) where the public interest lies.

15 *Id.* at 1115 [citations and quotations omitted]; *see also Hilton v. Braunschweig*, 481 U.S.
16 770 (U.S.N.J. 1987); *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962) (holding
17 that when considering a stay, courts consider “[1] the possible damage which may
18 result from the granting of a stay, [2] the hardship or inequity which a party may
19 suffer in being required to go forward, and [3] the orderly course of justice
20 measured in terms of the simplifying or complicating of issues, proof, and questions
21 of law which could be expected to result from a stay.”) “The proponent of a stay
22 bears the burden of establishing its need.” *Clinton v. Jones*, 520 U.S. 681, 708
23 (1997). This Court’s authority to stay a proceeding is “incidental to the power
24 inherent in every court to control the disposition of the causes on its docket with
25 economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N.
26 Am. Co.*, 299 U.S. 248, 254 (1936).

27 An analysis of the foregoing factors in this case demonstrates that Plaintiff is
28 likely to succeed on the merits if Defendants’ interlocutory appeal goes forward.

1 Defendants cannot satisfy their burden, and their motion to stay should be denied.

2 **1. Defendants' Interlocutory Appeal is Unlikely to Succeed on the Merits**

3 As discussed in detail in Plaintiff's opposition to Defendants' motion for
4 summary judgment (Dkt. No. 101), Plaintiff is likely to prevail on the merits of
5 Defendants' interlocutory appeal if the appeal goes forward. On Defendants'
6 interlocutory appeal, the Ninth Circuit cannot second guess this Court's
7 determination that there are genuine issues of material fact, and the Ninth Circuit
8 must (as this Court did) view the facts in the light most favorable to Plaintiff.

9 On Plaintiff's facts, Mr. Barber's constitutional right to be free from
10 excessive force was clearly established at the time of the shooting, as this Court
11 agreed in its MSJ Order. The Ninth Circuit in *Villanueva v. State of California*, 986
12 F.3d 1158, 1172 (9th Cir. 2021) stated, “[i]n light of *Acosta*, all reasonable officers
13 would know it is impermissible to shoot at a slow-moving car when he could
14 ‘simply step[] to the side’ to avoid danger.” Several Ninth Circuit cases published
15 prior to this incident have held the same. *See, e.g., Orn*, 949 F.3d at 1179 (denying
16 qualified immunity and holding that “at least seven circuits had held that an officer
17 lacks an objectively reasonable basis for believing that his own safety is at risk when
18 firing into the side or rear of a vehicle moving away from him”); *A.D. v. California*
19 *Highway Patrol*, 712 F.3d 446, 458 (9th Cir. 2013); *Adams v. Speers*, 473 F.3d 989,
20 994 (9th Cir. 2007) (denying qualified immunity where suspect's nondangerousness
21 placed the case squarely “within the obvious” and holding that shooting driver of
22 slow-moving car was unreasonable where the driver posed no threat); *Acosta*, 83
23 F.3d at 1146 (finding that a reasonable officer “would have recognized that he could
24 avoid being injured when the car moved slowly, by simply stepping to the side”). As
25 discussed above and in this Court's MSJ Order, the cases upon which Defendants
26 rely, including *Monzon* and *Wilkinson*, are distinguishable from Plaintiff's version of
27 the facts in this case. For these reasons, Defendants have not met their burden of
28 showing that they are likely to succeed on the merits of their interlocutory appeal.

1 Further, Defendants would not be successful on any appeal of this Court’s
2 decision that Defendants’ *Heck* defense fails. As this Court appropriately held:
3 Defendants forfeited their *Heck* affirmative defense by not asserting it
4 in their answers, *see* Dkts. 75, 78 at 22-26. *See Hebrard*, 90 F.4th at
5 1006 (“[The defendant’s] failure to plead *Heck* as an affirmative
6 defense clearly constituted [] a forfeiture.”). “An affirmative defense,
7 once forfeited, is ‘exclu[ded] from the case.’” *Wood v. Milyard*, 566
U.S. 463, 470 (2012). Thus, rejecting Defendants’ *Heck* defense on this
ground alone is sufficient.

8 (Dkt. No. 132 (“MSJ Order”) at p. 10).

9 **2. Plaintiff Would be Prejudiced by a Stay of his Case**

10 While the Supreme Court has allowed interlocutory appeals of qualified
11 immunity in light of qualified immunity’s purpose to protect a public official from
12 liability and from standing trial, courts have recognized that this approach may also
13 “injure the legitimate interests of other litigants and the judicial system.” *See Vargas*
14 *v. Cnty. of Los Angeles*, Case No. CV 19-3279 PSG (ASx), 2021 WL 2403162, at *6
15 (C.D. Cal. May 5, 2021) (citing *Apostol*, 870 F.3d at 1338-39). In recognizing the
16 value of a *Chuman* certification in the face of a frivolous appeal, the Seventh Circuit
17 in *Apostol v. Gallion* explained:

18 During the appeal memories fade, attorneys’ meters tick, [and] judges’
19 schedules become chaotic) to the detriment of litigants in other cases).
20 Plaintiffs’ entitlements may be lost or undermined. Most deferments
21 will be unnecessary. The majority in *Forsyth* appeals—like the bulk of
22 all appeals—end in affirmance. Defendants may seek to stall because
23 they gain from the delay at plaintiffs’ expense, an incentive yielding
24 unjustified appeals. Defendants may take *Forsyth* appeals for tactical as
well as strategic reasons: disappointed by the denial of a continuance,
they may help themselves to a postponement by lodging a notice of
appeal.

25 870 F.2d at 1138-39.

26 Almost five years have passed since the April 27, 2021 shooting giving rise to
27 this lawsuit. Plaintiff filed his lawsuit on April 12, 2022. On July 27, 2022, this
28

1 action was stayed pending completion of Plaintiff's criminal case, and the stay was
2 not lifted for approximately two and a half years, until December 19, 2024. (Dkt.
3 No. 43). Plaintiff Barber is entitled to his day in court without any further stay of
4 this action.

5 In light of the frivolous nature of Defendants' Appeal, it would be prejudicial
6 to Plaintiff to vacate the current trial date based on Defendants' inappropriate
7 interlocutory Appeal, which could result in a stay of this case for another one to two
8 years while the appeal is pending. Further, in addition to consuming the resources of
9 the appellate court, such a lengthy appeal would cut across the public interest in the
10 expeditious and efficient resolution of litigation.

11 **IV. CONCLUSION**

12 For the foregoing reasons, Plaintiff respectfully requests that this Court deny
13 Defendants' Ex Parte Application for an Order to Stay Proceedings Pending Appeal
14 and issue an order certifying Defendants' interlocutory appeal as frivolous and
15 retaining jurisdiction for this case to proceed to trial.

16
17 Respectfully submitted,

18
19 DATED: December 31, 2025 LAW OFFICES OF DALE K. GALIPO

20
21 By: /s/ Renee V. Masongsong
22 Dale K. Galipo
23 Renee V. Masongsong
24 Attorneys for Plaintiff

25 Dated: December 31, 2025 IVIE MCNEILL WYATT
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